

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MARGUERITE CARRUBBA

PLAINTIFF

V.

CIVIL ACTION NO. 1:07CV1238

**HARRISON COUNTY, MISSISSIPPI BY AND
THROUGH ITS BOARD OF SUPERVISORS;
HARRISON COUNTY SHERIFF GEORGE PAYNE;
WAYNE PAYNE; DIANE GATSON RILEY;
STEVE CAMPBELL; RICK GATSON; RYAN TEEL;
KARLE STOLZE, WILLIAMS PRIEST, JAMES A.
GONDLES, JR. AMERICAN CORRECTIONAL
ASSOCIATION; JOHN AND JANE DOES 1-3;
HEALTH ASSURANCE LLC AND J. L. WHITE**

DEFENDANTS

**DEFENDANT, GEORGE PAYNE’S MOTION IN LIMINE NO. 1 TO BAR
PLAINTIFF’S EVIDENCE AND REFERENCES TO THE CONSENT DECREE,
ACCOMPANYING REPORTS AND TESTIMONY OF THE DEPARTMENT OF
JUSTICE’S CONSULTANT STEVE MARTIN, AND RELATED CORRESPONDENCE**

COMES NOW, Defendant, Sheriff George Payne, in his official capacity, by and through his attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and moves this Honorable Court in *limine*, to enter an order barring Plaintiff’s evidence and references to the 1995 Federal Consent Decree, Report of Department of Justice’s Consultant Steve Martin, and excerpt from Report of Department of Justice’s Consultant Steve Martin, and correspondence from William Maddox and testimony of Steve Martin. In support thereof, Defendant states as follows:

1. Defendant respectfully moves this Court to bar Plaintiff from offering any exhibit documents, testimony, or argument relative to the 1995 Consent Decree, Report of United States Department of Justice’s Consultant, and related correspondence, pursuant to Fed. R. Evid. 801, 802

being inadmissible hearsay; pursuant to Fed. R. Evid. 401 and 402 being evidence which is not relevant and therefore is not admissible; pursuant to 407, as evidence of subsequent remedial measures; pursuant to Fed. R. Evid. 701-704 and Fed. R. Civ. P. 26 and 16, which prohibits Plaintiff's attempt to rely on testimony of any fact and/or potential witness who was never properly designated by Plaintiff in this case, and who should not be permitted to offer his opinions at trial. See Consent Decree, **Exhibit "1"**; 7th Supplemental Report of Steve J. Martin, **Exhibit "2"**; William Maddox correspondence, **Exhibit "3"**.

2. In the event the Court should allow the 7th Supplemental Report of Steve Martin and cover letter by William Maddox into evidence, Defendant reserves the right to introduce all other consent decree reports prepared by Steve Martin.

WHEREFORE PREMISES CONSIDERED Defendant, George Payne respectfully requests this Court to enter an Order granting this Motion in Limine and respectfully requests the Court to enter an Order as follows:

- A) Directing the Plaintiff through their respective counsel, and counsel individually, not to mention, refer to, or interrogate concerning, voluntarily answer, or attempt to convey before the jury whether orally or through a document, at any time during these proceedings, in any manner, either directly or indirectly, the subject matters as stated above without first informing the Court and obtaining permission of the court outside the presence and hearing of the jury;
- B) Instructing the Plaintiff, through their respective counsel, and counsel individually, not to make any reference or inference to the fact that this motion has been filed, argued or ruled upon by this Court; and
- C) Instructing Plaintiff and Plaintiff's attorney to warn and caution each and every witness appearing in their phase of this litigation to strictly comply with the Court's ruling.

RESPECTFULLY SUBMITTED, this 28th day of July, 2010.

**GEORGE PAYNE, JR., IN HIS OFFICIAL CAPACITY
ONLY, Defendant**

BY: **DUKES, DUKES, KEATING & FANEC A, P.A.**

BY: s/Cy Faneca
CY FANEC A, MSB #5138

Cy Faneca, MSB #5128
Joe Gewin, MSB #8851
Haley N. Broom, MSB #101838
DUKES, DUKES, KEATING & FANEC A, P.A.
2909 13th St., Sixth Floor
Post Office Drawer W
Gulfport, Mississippi 39502
Telephone: (228) 868-1111
Facsimile: (228) 863-2886
cy@ddkf.com
jgewin@ddkf.com
hbroom@ddkf.com

CERTIFICATE OF SERVICE

I, CY FANeca, do hereby certify that I have this day electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Patrick R. Buchanan
Steven B. Dick
Mark Watts
Brown Buchanan
P.O. Box 1377
Biloxi, MS 39533
Attorneys for Plaintiff

Tim C. Holleman
Boyce Holleman & Associates
1729 23rd Avenue
Gulfport, MS 39501
Attorney for Harrison County

James L. Davis
Ian A. Brendel
Jim Davis, P.A.
P.O. Box 1521
Gulfport, MS 39502
Attorneys for Morgan Thompson

This, the 28th day of July, 2010.

s/CyFaneca
CY FANeca